IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4142 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

LALJI RAMJI DEDKIA - Respondent(s)

==========

Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR GM JOSHI for Respondent No(s).: 1.

==========

CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

.

1. This petition is directed against the judgment and award dated 2nd August, 1999 passed by the Labour Court, Junagadh in Reference [L.C.J.] 20/97, whereby the Labour Court has directed the petitioner Corporation to

reinstate the respondent with continuity in service along with 60% back wages.

2. The short facts of the case are that the respondent was working as a Conductor with the petitioner Corporation. On 5th July, 1994, while the respondent was on duty, the bus was checked by the checking squad of the petitioner Corporation and the squad found certain financial irregularities. Therefore charge sheet was issued and departmental inquiry was initiated against the respondent. Since the charges levelled against the respondent were proved, a show cause notice dated 17th November, 1995 was issued and thereafter he was dismissed from the service w.e.f. 27th November, 1995.

2.1. Against the said order, the respondent preferred First Departmental Appeal before the petitioner Corporation, which came to be rejected on 17th September, 1996.

2.2. Pursuant to that the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Junagadh for adjudication. The Labour Court after considering the case on merits, passed the

impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. While admitting the matter on 1st May, 2000, this Court had stayed the operation of the impugned award qua back wages on a condition that the petitioner shall reinstate the respondent within a period of four weeks. Since, the respondent is already reinstated in service, in the interest of justice, it would not be proper to disturb the said position at this stage. Hence, this Court is not considering this petition so far as the grant of reinstatement in service is concerned.

4. Having gone through the award, it appears that the Labour Court has not given any cogent reasons as to on what basis it has awarded back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award is required to be quashed and set aside.

5. However while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947, the Labour Court has not imposed any penalty. While substituting the order of dismissal, the Labour Court ought to have imposed some penalty on the respondent. Looking to the charges levelled against the respondent and considering the fact that the respondent had committed 20 defaults in the past, I am of the opinion that the Labour Court ought to have imposed a penalty of stoppage of three increments with future effect.

6. For the foregoing reasons, the petition is partly allowed. The impugned dated 2nd August, 1999 passed by the Labour Court, Junagadh in Reference [L.C.J.] 20/97 qua back wages is quashed and set aside and rest of the award is confirmed. Further a penalty of stoppage of

three increments with future effect is imposed on the respondent. It is clarified that the respondent shall be entitled for all benefits from the date of the publication of the award till he is reinstated in service after the aforesaid penalty has been imposed. The said benefits to be given within a period of three months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/